

409216

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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9957

FILE: B-194492

DATE: April 30, 1979

MATTER OF: Hy Gain Electronics Division,
Telex Communications, Inc.

DIGEST:

Protest based upon improprieties apparent on face of solicitation and subsequent adverse agency action is dismissed because it was not filed before closing date for receipt of technical proposals or within 10 working days of initial adverse agency action.

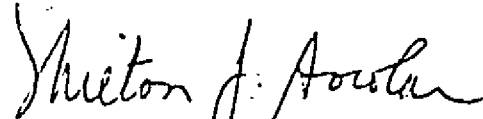
Hy Gain Electronics Division, Telex Communications, Inc. (Hy Gain), protests the proposed contract award to DHV, Inc., by the Contracting Office, McClellan Air Force Base, U.S. Air Force (Air Force) under request for proposals No. FO460679-R-0208. The protest, however, must be dismissed as untimely filed.

Hy Gain contends that this two-step procurement for antenna systems should not have been totally set aside for small business and that the procurement conflicts with the President's anti-inflation efforts because compliance with strict Government specifications is required and substantially similar commercially available equipment is obtainable at a much lower price. Upon receipt of the request for technical proposals Hy Gain protested the small business set-aside to the Air Force in a letter dated May 26, 1978. This protest was denied on June 7, 1978. Hy Gain thereafter participated in this procurement as a proposed subcontractor of Radiation Systems, Inc. which has also protested this procurement on other grounds.

Hy Gain's objections to the set-aside and the unnecessarily restrictive specifications concern matters which were apparent from the solicitation and as such should have been raised either with the procuring agency or this Office prior to the due date for proposals. 4 C.F.R. 20.2(b)(1) (1978). Although the former issue

was initially raised prior to that time with the procuring agency, the protester failed to pursue the issue with this Office within 10 days after the procuring agency's initial adverse action on the protest as required by 4 C.F.R. 20.2(a). Thus, the protest received here on April 4, 1979 is untimely and is dismissed.

We point out, however, that the decision whether a procurement should be set aside for small business is within the authority and discretion of the contracting agency. H. Webb Hayes & Associates, Inc., B-191259, May 1, 1978, 78-1 CPD 336. Normally, a set-aside for small business concerns may be made if there is reason to believe that more than one firm is in a position to compete. KDI Electro-Tec Corporation, B-185714, June 8, 1976, 76-1 CPD 364. Also, whether a procurement conflicts with the President's policy to control inflation is not a matter for consideration by this Office under its bid protest function.



Milton J. Socolar
General Counsel